



DT02 Rec'd PCTO 2 1 MAY 2004

PATENT  
0230-0162P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Kenji ASANO et al. Conf.: 3321  
Appl. No.: 09/856,716 Group: 1654  
Filed: May 25, 2001 Examiner: C. Tate  
For: LAK ACTIVITY-SCREENING MATERIALS CONTAINING  
LENTINUS EXTRACT OF EDODES MYCELIUM AND LAK  
ACTIVITY-SCREENING METHODS USING THE EXTRACT

RENEWED PETITION UNDER 37 C.F.R. § 1.47(a)

RECEIVED

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

May 21, 2004

2 SEP 2004

Sir:

Legal Staff  
International Division

In response to the decision on the petition issued on March 16, 2004, the due date having been extended for one (1) month to May 16, 2004, the present renewed petition and attachments are respectfully submitted.

1. This petition is to declare that the non-signing Inventor, Mr. Yutaka TAJIMA, refuses to sign the oath or declaration after having been presented with the same.

In the Decision on Applicant's petition mailed March 16, 2004, the PCT Legal Examiner found the petition of February 19,

05/24/2004 SSESHE1 00000125-09856717

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110.00-0P

05/27/2004 SSESHE1 00000096 09856716

110.00 0P

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2002, insufficient for the following reason, which has been addressed herein.

The Examiner indicates that there is no evidence that a diligent effort was made to locate the non-signing inventor and to present him with a complete set of application papers for his signature.

Attached hereto are a i) Declaration executed by Inventor Mr. Kenji ASANO and Mr. Naonori MURAKAMI, Director or Research and Development Company of the Assignee of the application, Kobayashi Pharmaceutical Co., Ltd. and a ii) Declaration executed by Mr. Tadahiko KURITA and Dr. Hiroko EJIRI, Japanese attorneys with the Japanese law firm of YUASA and HARA. Also attached are English translations of Attachment Nos. 1-5 of the Declaration of Mr. ASANO and Mr. MURAKAMI and English translations of Exhibit Nos. 1-5 of the Declaration of Mr. KURITA and Ms. EJIRI.

As evidenced by the Declaration executed by Mr. ASANO and Mr. MURAKAMI, Inventor Mr. Yutaka TAJIMA has refused to execute the Declaration and Power of Attorney after several requests and attempts to discuss the matter with him.

As detailed in paragraph 4 of the Declaration, Mr. TAJIMA executed the Power of Attorney for corresponding PCT App. No.

JP99/06615. However, as indicated in paragraphs 5 and 6, in the interim period of time between filing the corresponding international application and filing the present national stage application, Mr. TAJIMA severed his relationship with Kobayashi Pharmaceutical Co., Ltd. Subsequent to the termination of the relationship between Mr. TAJIMA and Kobayashi Pharmaceutical Co., Ltd., Mr. TAJIMA refused to sign the Declaration and Power of Attorney for the U.S. national stage application.

At this time Mr. TAJIMA has refused all further communication regarding this matter. See Item 7 of the Declaration of Mr. MURAKAMI and Mr. ASANO.

Mr. TAJIMA was also contacted by Mr. Tadahiko KURITA and Dr. Hiroko EJIRI, Japanese attorneys with the Japanese law firm of YUASA and HARA. Attached hereto is a Declaration of Mr. KURITA and DR. EJIRI, wherein Mr. KURITA and DR. EJIRI state that they contacted Mr. TAJIMA on multiple occasions and requested that he execute the Declaration and Power of Attorney documents. Mr. TAJIMA initially simply refused to sign the documents and finally on June 12, 2001 returned the documents to the offices of YUASA & HARA by registered mail.

Thus, Mr. TAJIMA has explicitly refused to execute the Declaration and Power of Attorney for the application, on several occasions and to several different individuals.

Attachment No. 3 of the Declaration of Mr. ASANO and MURAKAMI is a copy of the Notification of Rupture dated November 25, 2000, i.e. approximately one year after the International Filing date of the present application. In paragraph (2) of the Notification of Rupture, Mr. TAJIMA acknowledges the creation of "the Intellectual Property according to my efforts."

While the Declaration & Power of Attorney may have not been sent to Mr. TAJIMA in the same package as the specification, it is clear from the English translations of Attachment No. 5 of the Declaration of Mr. MURAKAMI and Mr. ASANO and Exhibit Nos. 1-5 of the Declaration of Mr. KURITA and Ms. EJIRI, that Mr. TAJIMA is aware of the content of the present application and considers himself to be an inventor of the subject matter of thereof. In this regard, the Examiner's attention is directed to Exhibit No. 3 of the Declaration of Mr. KURITA and Ms. EJIRI, which is a letter received from Mr. TAJIMA. In paragraph (1), Mr. TAJIMA expressly states that he is an inventor of the present subject matter.

It is further clear that the relationship of the Assignee, Kobayashi Pharmaceutical, with Mr. TAJIMA is adversarial at best and that Mr. TAJIMA has made it patently clear that he has no intention of ever signing any documents associated with any patent applications. In this regard, Mr. TAJIMA states in paragraph (2) of Exhibit No. 3 of the Declaration of Mr. KURITA and Ms. EJIRI that he will not cooperate or agree to execute any documents for the application. This position is reiterated in Attachment No. 5 of the Declaration of Mr. ASANO and Mr. MURAKMI, which is letter sent to Mr. TAJIMA, wherein a telephone conversation of December 18, 2001 is referenced, during which Mr. TAJIMA repeated his refusal sign any document.

Based on the evidence submitted, Applicants have shown that 1) Mr. TAJIMA acknowledges himself as an inventor of the present invention and 2) Mr. TAJIMA has made it clear he will not sign associated documents for the application.

2. Attached hereto as an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116.

3. Fee Payment (37 C.F.R. § 1.17(i))

☒ The surcharge fee in the amount of \$130.00 was paid on February 19, 2002. As noted on page 2 the Decision mailed on March 16, 2004, no additional fee is believed to be needed.

4. Statement of non-signing inventor's last known address:

Yutaka TAJIMA  
10-511, Yaemizo 3-chome  
Saga-shi, Saga 849-0935 JAPAN

5. Applicants respectfully request that the present renewed petition be given expedited consideration and returned to issue, since the application was withdrawn from issue from the USPTO.

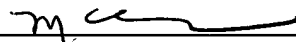
6. Applicants request a one (1) month extension of time for filing the present renewed petition. The required fee is attached hereto.

If there are any questions regarding the present petition or other matters pertaining to the application, the Examiner is requested to please contact MaryAnne Armstrong, PhD (Reg. No. 40,069) in the Washington DC area at (703) 205 8000.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By   
Gerald M. Murphy, Jr., #28,977

MaryAnne Armstrong, PhD #40,069

GMM/MAA/  
0230-0162P

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000

Attachments: Declaration of Mr. Kenji ASANO and Mr. Naonori MURAKAMI, with English translation of Attachments

Declaration of Mr. Tadahiko KURITA and Dr. Hiroko EJIRI, with English translation of Exhibits

Declaration and Power of Attorney



VERIFICATION OF A TRANSLATION

I, the below named translator, hereby declare that:

My name and post office address are as stated below;

That I am knowledgeable in the English language and in the language in which the Declaration of Naonori MURAKAMI and Kenji ASANO and that I believe the English translation of the Declaration is a true and complete translation.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated this 15th day of November 2002.

Full name of the translator: Norihiro FUKAZAWA

Signature of the translator:

Post Office Address: c/o YUASA AND HARA, Section 206,  
New Ohtemachi Bldg., 2-1,  
Ohtemachi 2-chome, Chiyoda-ku,  
Tokyo, JAPAN



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Applicant: Kenji ASANO et al.  
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ACTIVITY-SCREENING METHODS USING THE EXTRACT

DECLARATION

We, Kenji ASANO and Naonori MURAKAMI, declare that the following is true:

1. Kenji ASANO is one of the inventors in the subject application. Kenji ASANO was Chief of Research Management Group of KOBAYASHI PHARMACEUTICAL CO., LTD at the time of filing the subject application; Kenji ASANO is now Director of Research and Development Division of Research and Development Company of KOBAYASHI PHARMACEUTICAL CO., LTD . Naonori MURAKAMI has been Director of Research and Development Company of the same company since March 2001; Naonori MURAKAMI is currently in the same position.

At the time of filing the subject patent application, Research Management Group was entrusted with the control and management of the subject patent application by KOBAYASHI PHARMACEUTICAL CO., LTD; currently, Research and Development Company is entrusted with the

control and management by KOBAYASHI PHARMACEUTICAL CO., LTD. Therefore, at the time of filing the subject patent application, Kenji ASANO, who was Chief of Research Management Group, was authorized by KOBAYASHI PHARMACEUTICAL CO., LTD, one of the assignees of the subject application, to make all correspondence to attorneys and the other inventors with respect to the present invention of the subject U.S. Application. Currently, Naonori MURAKAMI, who is Director of Research and Development Company, is authorized by KOBAYASHI PHARMACEUTICAL CO., LTD to make all correspondence to attorneys and inventors with respect to the present invention of the subject U.S. Application;

## 2. Before Japanese Patent Applications

To prepare four patent applications, we started discussing the technical matters of the inventions with Mr. Ichio SHAMOTO, Mr. Shosuke IMAI, Mr. Chuji MASUI, Mr. Tadahiko KURITA, Mr. Yasushi KOBAYASHI, Mr. Hiroyuki TOMITA or Mr. Kiyoshi MURAKAMI, and Dr. Hiroko EJIRI (all of them patent attorneys of Yuasa and Hara) from around October 10, 1998. The four patent applications were filed with the Japanese Patent Office on November 27, 1998.

JAPANESE PATENT APPLICATION NO.	TITLE OF THE INVENTION
(1) JP Appln. No. 353926/1998	LAK ACTIVITY-SCREENING MATERIALS CONTAINING EXTRACT OF LENTINUS EDODES MYCELIUM AND LAK ACTIVITY-SCREENING METHODS USING THE EXTRACT.

(2) JP Appln. No. 337822/1998	GAMMA DELTA T CELL MMUNOACTIVITY ENHANCERS CONTAINING EXTRACT OF LENTINUS EDODES MYCELIUM.
(3) JP Appln. No. 353927/1998	LAK ACTIVITY ENHANCERS DERIVED FROM EXTRACT OF LENTINUS EDODES MYCELIUM.
(4) JP Appln. No. 353928/1998	LAK ACTIVITY-ENHANCING FORMULATIONS CONTAINING EXTRACT OF LENTINUS EDODES MYCELIUM.

Before the filing these patent applications, Kenji ASANO explained to and discussed with Mr. Yutaka TAJIMA items (i)-(iii) as described below relating to these applications. Mr. Yutaka TAJIMA and KOBAYASHI PHARMACEUTICAL CO., LTD reached an agreement with respect to these patent applications, and Kenji ASANO as a representative of KOBAYASHI PHARMACEUTICAL CO., LTD understood Mr. Yutaka TAJIMA's reply (a)-(c).

Communication from Kenji ASANO to Mr. Yutaka TAJIMA

(i) We decided to file patent applications for the inventions of the findings regarding EXTRACT OF LENTINUS EDODES MYCELIUM, which have been derived from the research carried out in KOBAYASHI PHARMACEUTICAL CO., LTD and have, in part, been derived from the experiments carried out by Mr. Yutaka TAJIMA. At the filing date of these patent applications, we considered that, since Mr. Yutaka TAJIMA had carried out a part of experiments, it would be appropriate to inform Mr. Yutaka TAJIMA that we would file patent applications for these inventions.

(ii) Though a part of the experiments was carried out by Mr.

Yutaka TAJIMA, it is not necessarily clear whether Mr. Yutaka TAJIMA is acknowledged to be one of the inventors. Therefore, we, KOBAYASHI PHARMACEUTICAL CO., LTD, wished to discuss the matter of inventorship with Mr. Yutaka TAJIMA.

(iii) We would file patent applications in foreign countries as well as in Japan, since production etc. may be carried out in such countries. However, we did not decide on the countries to be filed as foreign patent applications at that time, and wished to make the decision upon filing PCT applications afterward, since we had to discuss the costs involved in filing foreign applications.

Reply from Mr. Yutaka TAJIMA

(a) Regarding the items (i) and (ii) as described above, Mr. Yutaka TAJIMA wished to be included as one of the inventors of these patent applications.

(b) Mr. Yutaka TAJIMA intended to assign all rights concerning these inventions to Mr. Hitoshi NAGAOKA and KOBAYASHI PHARMACEUTICAL CO., LTD. In return, Mr. Yutaka TAJIMA would be honored as one of the inventors

(c) Mr. Yutaka TAJIMA would sign the ASSIGNMENTS.

3. At The Filing Of Japanese Patent Applications

Based on the agreement between Mr. Yutaka TAJIMA and KOBAYASHI PHARMACEUTICAL CO., LTD as described in Section 2, Kenji ASANO received the ASSIGNMENTS which state that Mr. Yutaka TAJIMA assigned to Mr. Hitoshi NAGAOKA and KOBAYASHI PHARMACEUTICAL CO., LTD all the

rights to obtain patents based on the above identified four Japanese Patent Applications (Attachment No. 1) on November 27, 1998;

4. At The Filing Of International Patent Applications Under Patent Cooperation Treaty

As stated above, Mr. Yutaka TAJIMA and we have made an agreement for filing International Patent Applications based on the Japanese Patent Applications. Therefore, we filed three International Patent Applications with the Japanese Patent Office, as a receiving Office, on November 26, 1999 as follows. The subject U. S. Patent Application Serial No. 09/856,716 corresponds to (1) PCT/JP99/06615 below.

INTERNATIONAL APPLICATION NO. (PRIORITY NO.)	TITLE OF THE INVENTION
(1) PCT/JP99/06615 (JPA No. 353926/1998)	LAK ACTIVITY-SCREENING MATERIALS CONTAINING EXTRACT OF LENTINUS EDODES MYCELIUM AND LAK ACTIVITY-SCREENING METHODS USING THE EXTRACT.
(2) PCT/JP99/06617 (JPA No. 337822/1998)	GAMMA DELTA T CELL MMUNOACTIVITY ENHANCERS CONTAINING EXTRACT OF LENTINUS EDODES MYCELIUM.
(3) PCT/JP99/06616 (JPA No. 353927/1998 & JPA No. 353928/1998)	LAK ACTIVITY ENHANCERS DERIVED FROM EXTRACT OF LENTINUS EDODES MYCELIUM AND LAK ACTIVITY-ENHANCING FORMULATIONS CONTAINING THE EXTRACT.

We received POWER OF ATTORNEYS regarding the above identified three international patent applications from Mr. Yutaka TAJIMA on

January 5, 2000, which states that Mr. Yutaka TAJIMA appoints Mr. Ichio SHAMOTO, Mr. Shosuke IMAI, Mr. Chuji MASUI, Mr. Tadahiko KURITA, Mr. Yasushi KOBAYASHI, and Dr. Hiroko EJIRI or Mr. Hiroyuki TOMITA, (all of them are patent attorneys of Yuasa and Hara) as lawful attorneys (Attachment No. 2);

5. NOTIFICATION OF RUPTURE From Mr. Yutaka TAJIMA

Mr. Yutaka TAJIMA sent NOTIFICATION OF RUPTURE dated November 25, 2000 to KOBAYASHI PHARMACEUTICAL CO., LTD, in which he stated that he would unilaterally sever relations with the assignees for reasons which were irrelevant to the above-identified patent applications (Attachment No. 3). KOBAYASHI PHARMACEUTICAL CO., LTD received the notification;

6. The Procedures Regarding U.S. National Entry

Attorneys (Yuasa and Hara) sent to Mr. Yutaka TAJIMA all documents including OATH, ASSIGNMENT and POWER OF ATTORNEY, which are necessary to carry out the procedure. However, Mr. Yutaka TAJIMA refused to sign these documents on account of the rupture between Mr. Yutaka TAJIMA and the assignees;

7. Approach From KOBAYASHI PHARMACEUTICAL CO., LTD To Mr. Yutaka TAJIMA

We wondered whether Mr. Yutaka TAJIMA had misunderstood the meaning of the documents such as OATH, ASSIGNMENT and POWER OF ATTORNEY for the patent applications. Naonori MURAKAMI sent to Mr.

Yutaka TAJIMA a letter dated December 11, 2001, in which we offered Mr. Yutaka TAJIMA the opportunity for a meeting to explain the meaning of the documents, and asked Mr. Yutaka TAJIMA to sign OATHs and POWER OF ATTORNEYS for the subject U.S. applications (Attachment No. 4), and also sent a letter including the OATHs dated December 27, 2001, in which we again asked Mr. Yutaka TAJIMA to sign OATHs (Attachment No. 5).

In response, Mr. Yutaka TAJIMA telephoned us and stated: "I do not wish to meet with you due to the rupture between you and I", and "I am not aware of the fact that you filed foreign patent applications, and am not obliged to cooperate in the procedures".

In response, Naonori MURAKAMI responded to Mr. Yutaka TAJIMA as follows: "you agreed to assign all rights for these inventions" (Section 2 (b) above) and "we received POWER OF ATTORNEYS for International Patent Applications before receiving THE NOTIFICATION OF RUPTURE" (Section 4 above, Attachment No. 2).

Subsequently, we repeatedly offered Mr. Yutaka TAJIMA about making an opportunity for a meeting and asked Mr. Yutaka TAJIMA to sign OATHs and POWER OF ATTORNEYS for U.S. Applications. However, Mr. Yutaka TAJIMA has refused to meet us and to sign OATHs and ASSIGNMENTS due to the rupture between Mr. Yutaka TAJIMA and us.

Finally, Mr. Yutaka TAJIMA responded : "I acknowledge that I am one of the inventors of these inventions and that I assigned the rights to obtain patents to Mr. Hitoshi NAGAOKA and KOBAYASHI PHARMACEUTICAL CO., LTD. However, I do not wish correspond with you any further because of the rupture between you and I. Therefore,

I will not sign the documents, and nor do I wish to receive any further phone call from you" ;

#### 8. Conclusion

As described above, KOBAYASHI PHARMACEUTICAL CO., LTD has repeatedly made sincere efforts to explain the meanings of the documents to Mr. Yutaka TAJIMA and to solve the misunderstandings of Mr. Yutaka TAJIMA. However, due to the rupture based on reasons which are not relevant to these patent applications, Mr. Yutaka TAJIMA refused to sign the documents, despite the fact that he was obliged to do so. Certainly, the formality requirements of the subject patent application are not furnished since Mr. Yutaka TAJIMA rejected to sign OATH, ASSIGNMENT and POWER OF ATTORNEY. However, KOBAYASHI PHARMACEUTICAL CO., LTD considers that all the rights regarding the subject patent application had been assigned from Mr. Yutaka TAJIMA to the assignees in light of the process of confirming inventorship of the subject application.

November 11, 2002

30-3, 1-Chome, Toyokawa,  
Ibaraki-shi, Osaka, Japan  
KOBAYASHI PHARMACEUTICAL CO., LTD  
Research and Development Company

Director of Research and Development Division  
Kenji ASANO (Seal)

Director of Research and Development Company  
Naonori MURAKAMI (Seal)



## CONTENTS OF THE ATTACHMENTS

Attachment 1: A copy of "Assignment" of the inventions of Japanese Patent Application (JPA) No. 353926/1998, JPA No. 337822/1998, JPA No. 353927/1998, JPA No. 353928/1998, from Mr. Yutaka TAJIMA to KOBAYASHI PHARMACEUTICAL CO., LTD. (Assignee No. 1) and Mr. Hitoshi NAGAOKA (Assignee No. 2).

Attachment 2: A copy each of "POWER OF ATTORNEY" for International Patent Applications under Patent Cooperation Treaty (PCT), PCT/JP99/06615, PCT/JP99/06616 and PCT/JP99/06617.

Attachment 3: THE NOTIFICATION OF RUPTURE which was sent from Mr. Yutaka TAJIMA to KOBAYASHI PHARMACEUTICAL CO., LTD.

Attachment 4: A set of copies of the documents including a letter dated December 11, 2001, an envelope and a certification of delivery dated December 17, 2001 issued by the Japanese Postal Service; in the letter, Naonori MURAKAMI of KOBAYASHI PHARMACEUTICAL CO., LTD offered Mr. Yutaka TAJIMA an opportunity for a meeting to explain the meanings of the documents, and asked Mr. Yutaka TAJIMA to sign OATHs and POWER OF ATTORNEYS for the subject U.S. applications.

Attachment 5: A set of copies of the documents including a letter dated December 27, 2001, an envelope and a certification of delivery dated December 29, 2001 issued by the Japanese Postal Service; in the letter, Naonori MURAKAMI of KOBAYASHI PHARMACEUTICAL CO., LTD again asked Mr. Yutaka TAJIMA to sign OATHs and enclosed the OATHs in the letter.

米国特許商標庁

出願人： 浅野健治ら  
出願番号： 09/856,716  
米国出願書類提出日： 2001年5月25日  
発明の名称： シイタケ菌糸体抽出物を含有する LAK 活性スクリーニング物質およびそれを用いた LAK 活性スクリーニング法

宣誓書

私たち、浅野健治および村上直紀は、以下の通り相違なきことを、ここに宣誓いたします：

1. 浅野健治は本願の発明者であり、出願当時においては研究管理グループのグループ長を担当し、現在は研究部長を担当している。村上直紀は 2001 年 3 月から現在に至るまで、研究企画部長を担当している。

小林製薬株式会社における本件特許出願に関する統括運営は、本願出願当時においては研究管理グループが権限を有しており、現在は研究企画部が権限を有している。したがって、本件特許出願当時においては研究管理グループ長であった浅野健治が、現在は研究企画部長である村上直紀が、本願発明の譲受人である小林製薬株式会社における、本願出願についての代理人および発明者との対応に関する職務権限を有している。

2. 日本国特許出願以前

平成 10 (1998) 年 10 月 10 日頃より、4 件の特許出願に関して、社本一夫氏、今井庄亮氏、増井忠武氏、栗田忠彦氏、小林泰氏、富田博行氏または村上清氏、および江尻ひろ子氏（すべて、ユアサハラ法律特許事務所の弁理士）を代理人として発明内容の検討を開始し、同年 11 月 27 日に、日本国特許庁に対して、以下の通り特許出願を行った；

日本国出願番号	発明の名称
(1) 特願平 10-353926	シイタケ菌糸体抽出物を含有する LAK 活性スクリーニング物質およびそれを用いた LAK 活性スクリーニング法
(2) 特願平 10-337822	シイタケ菌糸体抽出物を含む $\gamma\delta$ T 細胞免疫活性増強剤
(3) 特願平 10-353927	シイタケ菌糸体抽出物由来の LAK 活性増強物質
(4) 特願平 10-353928	シイタケ菌糸体抽出物由来の LAK 活性増強用製剤

これらの特許出願に関して、浅野健治から田島裕氏に対して以下の (i) ~ (iii) の内容に関して事前に説明・話し合いをし、田島裕氏および小林製薬株式会社の両者が合意に達したので、浅野健治は小林製薬株式会社を代表して、田島裕氏の回答 (a) ~ (c)

を了承した。

浅野健治から田島裕氏への内容

(i) 小林製薬株式会社で研究を行い、田島裕氏に一部の実験を協力していただいている「シイタケ菌糸体抽出物」に関する知見に関して、特許出願をすることとした。この際、田島裕氏には、一部の実験に関して協力していただいているので、特許出願をすることを、事前にお知らせすることとした。

(ii) 田島裕氏には一部の実験に関して協力していただいているが、発明者としての地位を認めることは必ずしも判然としないので、田島裕氏および小林製薬株式会社の間で話し合いをしたいと考えた。

(iii) 特許出願は、日本国のみではなく、外国へも行う。外国への出願は、当該国において製造等する可能性があるという意味で行うが、その指定国は、金銭の関係もあるため、後日決定することとした。

田島裕氏の回答

(a) 上記 (i) および (ii) に関して、特許出願をするにあたり、自分も発明者として名前を入れてほしい。

(b) 一切の権利は長岡均氏および小林製薬株式会社に譲渡するので、発明者の一人としての名誉がほしい。

(c) 譲渡証書にも押印する。

### 3. 日本国特許出願時

平成 10 (1998) 年 11 月 27 日に、田島裕氏から上述した 4 件の特許出願に関し、特許を受ける権利の譲渡に関する譲渡証書 (添付資料 1) を、事前の合意の通り、浅野健治が受領した；

### 4. 特許協力条約に基づく国際出願時

上述したとおり、国際出願することに関しては事前に合意していたので、平成 11 (1999) 年 11 月 26 日に、日本国特許庁を受理官庁として、以下の 3 件の国際特許出願を行った。本件米国出願第 09/856,716 号は、これらの出願のうち、(1) PCT/JP99/06615 に基づくものである。

国際出願番号 (優先権)	発明の名称
(1) PCT/JP99/06615 (特願平 10-353926)	シイタケ菌糸体抽出物を含有する LAK 活性スクリーニング物質およびそれを用いた LAK 活性スクリーニング法
(2) PCT/JP99/06617 (特願平 10-337822)	シイタケ菌糸体抽出物を含む $\gamma\delta$ T 細胞免疫活性増強剤

(3) PCT/JP99/06616  
(特願平 10-353927 及  
び特願平 10-353928)

シイタケ菌系体抽出物由来の LAK 活性増強物質およびこれを含む LAK 活性増強用製剤

上述した 3 件の国際特許出願に関して、平成 12 年 1 月 5 日に、田島裕氏から、社本一夫氏、今井庄亮氏、増井忠武氏、栗田忠彦氏、小林泰氏、および江尻ひろ子氏または富田博行氏（すべて、ユアサハラ法律特許事務所の弁理士）を代理人とする旨の委任状（添付資料 2）をそれぞれ受領した；

#### 5. 田島裕氏からの断交通知

田島裕氏は、平成 12 年 11 月 25 日に、上述した出願とは全く無関係な理由により、共同出願人である長岡均氏と小林製薬株式会社に対して、断交絶縁する旨の「断交通知」（添付資料 3）を送付し、小林製薬株式会社は、これを受領した；

#### 6. アメリカ国内移行に関する手続

代理人事務所（ユアサハラ法律特許事務所）から、田島裕氏に対して手続に必要な書類をすべて送付したが、断交しているという理由で、書類に対する押印を拒否した；

#### 7. 小林製薬株式会社から田島裕氏へのアプローチ

上述した出願に関して、田島裕氏が状況を誤解しているため、その説明を行うために、田島裕氏による宣誓書への押印をお願いするための面談の機会を求める書簡を平成 13（2001）年 12 月 11 日付けで（添付資料 4）、および田島裕氏による宣誓書への押印をお願いするために宣誓書を包含した書簡を同年 12 月 27 日（添付資料 5）に、村上直紀から田島裕氏にそれぞれ送付した；

これに対して、田島裕氏からは、「断交しており、会いたくない」旨、および「外国出願をしたことすら知らないので、手続をする義務はない」旨を、電話での返答で申し出てきた；

これに対して、村上直紀から、「一切の権利を譲渡していただいていることに関しては了済みである」旨（前記 2 (b)）、および「国際出願時の委任状は、断交通知前からいただいている」旨（前記 4、添付資料 2）を田島裕氏へ返答した；

その後、幾度となく面談の申し出と書類への手続の申出とを行ったが、断交していることを理由に、面談は一度もかなわず、また発明者宣誓書および譲渡書へのサインも行われなかった；

田島裕氏からは最終的に、「自分は発明者であり、そして長岡均氏と小林製薬株式会社に対して権利譲渡したことも認めるが、断交しているのだから何も関わり合いたくない。だから書類にサインはしない。以降、電話もしてほしくない。」との返答があった；


#### 8. おわりに

以上の通り、小林製薬株式会社としては、田島裕氏に対して、誤解がないように真摯


に説明を行ってきたが、本件特許出願とは全く無関係の理由による断交によって、本来田島裕氏が行わなければならない書類への手続が行われなかった。そして、本願出願においては、田島裕氏が発明者宣誓書および発明譲渡書へサインをしないために方式的要件を具備していないものの、小林製薬株式会社としては、本願出願の発明者の認定の経緯から、本願出願に関するすべての権利が田島裕氏から譲受人に対してすでに譲渡されていると考えている。

平成14(2002)年11月11日  
日本国大阪府茨木市豊川1-30-3  
小林製薬株式会社  
研究開発カンパニー

研究部長 浅野 健治

署名 浅野 健治 

研究企画部長 村上 直紀

署名 村上 直紀 

## 添付書類の目録

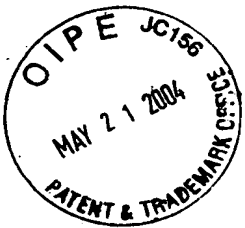
添付1：田島裕氏から小林製薬株式会社（譲受人1）および長岡均氏（譲受人2）への、特願平10-353926、特願平10-337822、特願平10-353927、および特願平10-353928の発明の「譲渡証書」のコピー。

添付2：特許協力条約（PCT）に基づく国際特許出願、PCT/JP99/06615、PCT/JP99/06616、およびPCT/JP99/06617についての「委任状」のそれぞれのコピー。

添付3：田島裕氏から小林製薬株式会社に対して送付された、断交通知のコピー。

添付4：2001年12月11日付けの手紙、封筒、および2001年12月17日付けで郵便局が発行した配達証明書のコピー；この手紙の中で、小林製薬株式会社の村上直紀は、田島裕氏に対して書類の位置づけについて説明する機会を与えてもらうよう申し出、そして田島裕氏に本件米国出願に関する宣誓書および委任状にサインをしてもらえるように要請した。

添付5：2001年12月27日付けの手紙、封筒、および2001年12月29日付けで郵便局が発行した配達証明書のコピー；この手紙の中で、小林製薬株式会社の村上直紀は、田島裕氏に本件米国出願に関する宣誓書にサインをしてもらえるように再度要請し、手紙の中に宣誓書を同封した。



IN THE U. S. PATENT AND TRADEMARK OFFICE

Applicant: Kenji ASANO et al.  
Appl. No.: 9/856,717  
Filed: May 25, 2001  
For:  $\gamma$   $\delta$  T CELL IMMUNOACTIVITY ENHANCERS CONTAINING  
EXTRACT OF LENTINUS EDODES MYCELIUM

DECLARATION

We, Tadahiko KURITA and Hiroko EJIRI, are attorneys of Yuasa and Hara and are appointed to be lawful attorneys for the International Patent Application (PCT/JP99/06617 (Priority application: JPA No. 337822/1998)), which corresponds to the subject U.S. Application Serial No. 09/856,717, and its priority Japanese Patent Application (JP Appln. No. 337822/1998);

We declare that the following statements are true and correct to the best of our knowledge.

STATEMENTS

We sent to Mr. Yutaka TAJIMA a letter dated June 1, 2001 enclosing the forms of OATH and ASSIGNMENT, which are necessary to effect the procedure of the U.S. Application Serial No. 09/856,717 (Our Ref. No.: PC/K(x)-17-21US) (Exhibit No. 1), and requesting Mr. Yutaka TAJIMA to sign the forms enclosed. A certified receipt of delivery was issued by the Japanese Postal Service, confirming that our letter was actually delivered to Mr. Yutaka TAJIMA on June 3, 2001 (Exhibit No. 2);

In response to our letter dated June 1, 2001, Mr. Yutaka TAJIMA sent us a letter dated June 4, 2001 by which he rejected our request to sign these documents on the ground of a rupture between Mr. Yutaka TAJIMA and the assignees (Exhibit No. 3). We received the letter sent by Mr. Yutaka TAJIMA on June 6, 2001;




We then sent a letter dated June 8, 2001 requesting Mr. Yutaka TAJIMA to return the forms of OATH and ASSIGNMENT by registered mail (Exhibit No. 4);

In response, Mr. Yutaka TAJIMA sent us a letter by registered mail dated June 12, 2001 enclosing the unsigned forms of OATH and ASSIGNMENT (Exhibit No. 5).


We declare further that all statements made herein of our knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

c/o Yuasa and Hara  
New-Ohtemachi Building, Section 206  
2-1, Ohtemachi 2-Chome,  
Chiyoda-ku, Tokyo, Japan  
Yuasa and Hara

Dated this 7<sup>th</sup> day of May, 2003

  
Patent Attorney Tadahiko KURITA

Dated this 7<sup>th</sup> day of May, 2003

  
Patent Attorney Hiroko EJIRI

English translation of Exhibit No. 1

Exhibit No. 1

June 1, 2001

To: Mr. Yutaka TAJIMA

From: Yuasa and Hara

ZIP Code: 100-0004

Section 206, New Ohtemachi Bldg.

2-1, Ohtemachi 2-Chome Chiyoda-Ku, Tokyo

Re: National Phase Entry of International Patent Application  
No. PCT/JP99/06615

Applicants: KOBAYASHI PHARMACEUTICAL CO., LTD,  
Hitoshi NAGAOKA

Designated Countries: United States, Great Britain, Canada,  
China, Korea, and Singapore

Deadline For Entry: May 27, 2001

Title of the invention LAK ACTIVITY-SCREENING MATERIALS  
CONTAINING LENTINUS EXTRACT OF EDODES MYCELIUM AND LAK  
ACTIVITY-SCREENING METHODS USING THE EXTRACT

Our Ref.: PC/K(X)-17-20US, GB, CA, CN, KR, and SG

Dear Sir. We are glad to hear that things are going well  
for you.

We enclose herewith the forms of Oath and Assignment  
which are necessary for the procedures of the national phase  
entry in the United States and Canada of the above identified  
International Applications. Please return the forms after  
signing your name in full on the places where marks are put by  
a pencil.

Sincerely yours

Enclosures: Oath and Assignment for the United States Each  
one sheet

Oath for Canada One sheet

平成13(2001)年6月1日

田島 裕 様

ユアサハラ法律特許事務所  
〒100-0004  
東京都千代田区大手町 2-2-1  
新大手町ビル 206 区  
Tel: 03-3270-6641 (大代表)  
Fax: 03-3246-0233  
弁理士 江尻 ひろ子  
(担当: 弁理士 深澤 憲広)

国際特許出願 No.PCT/JP99/06617 国内段階移行の件

出 願 人: 小林製薬株式会社、長岡 均

指 定 国: アメリカ・イギリス・カナダ  
中国・韓国・シンガポール

移 行 期 限: 2001年5月27日

名 称: シイタケ菌糸体抽出物を含む $\gamma\delta$ T細胞  
免疫活性増強剤

当所ファイル: PC/K(X)-17-21US,GB,CA,CN,KR,SG

拝啓 貴殿益々ご清栄のこととお慶び申し上げます。

上記アメリカ・カナダ移行手続に必要な宣誓書及び譲渡証を同封致しますので、鉛筆で印をつけた箇所に英文フルネームサインの上、ご返送くださいますようお願い申し上げます。

敬具

同 封: アメリカ用宣誓書及び譲渡証  
カナダ用譲渡証

各1通  
1通

English translation of Exhibit No. 2

Exhibit No. 2

<Post card for the proof of delivery>

Front face

To: ZIP Code: 100-0004  
Address: Section 206, New Ohtemachi Bldg.  
2-1, Ohtemachi 2-Chome Chiyoda-Ku  
Name: Yuasa and Hara

From: Saga North Post Office

Rear face

Postal Delivery Certificate  
Name of addressee: Mr. Yutaka TAJIMA  
Acceptance No.: 118-30-27025-5

We certify that the above postal matter was delivered to  
the addressee on June 3, 2001.

Saga Prefecture  
Saga North Postal Office  
Saga North June 3, 2001 18-24 (stamp)

6/出  
 18-24  
 郵便物配達証明書  
 1414

受取人の 氏 名	田 島 裕 様	
引受番号	118-30-27025-5	
上記の郵便物は、19年6月3日配達 したのでこれを証明します。		
佐 賀 県 佐賀北 郵便局		

〒07370 (12.1・1DP・11)

郵便はがき

10000004

千代田区太千手  
 新大寺町二丁目一  
 エアサハ法律  
 特許事務所様

佐賀北郵便局

8498799

English translation of Exhibit No. 3

Exhibit No. 3

To: Yuasa and Hara  
Patent attorney, Ms. Hiroko EJIRI  
Ditto, Mr. Norihiro FUKAZAWA

I received your letter dated June 1 (by a certified mail) today (June 4). The following is my response to the letter:

(1) I received the application papers with respect to the three International Patents (hereinafter referred to as "the subject cases").

I (hereinafter referred to as "X") admit that X in fact was involved on his own in the production of the Intellectual Property Rights relating to "the subject cases" and that those Rights originated from the findings obtained by the involvement of X.

Therefore, X is in a position to exercise various rights as the holder of those Rights.

(2) The application papers refer to "KOBAYASHI PHAMACEUTICAL Co., Ltd." (hereinafter referred to as "Y") and "Mr. Hitoshi NAGAOKA of MON Co., Ltd." (hereinafter referred to as "Z") as "Applicants". However, as of the end of November 2001, X expressly notified Y and Z in writing that X was going "to terminate all the relations with" Y and Z and will "sever the relations with" Y and Z.

Therefore, X has no obligation to agree on "the subject cases" and permit Y and Z to file applications concerning Intellectual Property Rights and have them registered.

X hereby announces to you that X will not agree on "the subject cases".

(3) Further, you are asking X to assign his rights to Y and Z, but X will not comply with this request.

(4) X has the whole documents of "the subject cases" in custody so that they might be used as documentary evidence in the future, but will return them (all of the original documents) if you so desire.

(5) You are free to disclose this notification to Y and Z.

There is no more to inform than the above.

June 4, 2001

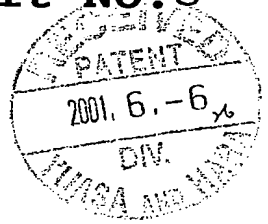
Rights Holder: Yutaka TAJIMA  
Sign (seal)

Home Address:

Zip Code 849-0935  
10-511, Yaemizo 3-Chome, Saga-shi, Saga, Japan  
Tel. 0952-31-1428  
Fax. 0952-31-1428

Office Address:

Zip Code 849-8501  
1-1, Nabeshima 5-Chome, Saga-shi, Saga, Japan  
Department of Clinical Laboratory  
Saga Medical School Hospital  
Tel. 0952-31-6511 (Ext. 3240, 3244)  
Fax. 0952-34-2028  
E-mail. [tajima@post.saga-med.ac.jp](mailto:tajima@post.saga-med.ac.jp)



ユアサハラ 法律特許事務所  
弁理士 江尻 ひろ子 殿  
同 深沢 憲広 殿

冠省

貴殿からの6月1日付けの通知を（配達証明便）、本日（6月4日）受領した。これについて、以下に回答する。

- ① 3通の国際特許に関する出願書類を受領した（以下「本件」と言う）。
  - ・「本件」に関する知的所有権については、間違いなく、当方（以下「甲」とする）が自ら関ったものであり、そこから得られた知見に源を発することを認める。
  - ・従って、当方は「権利者」として、諸権利を行使できる立場にある。
- ② 出願書類に「出願者」として、「小林製薬 殿（乙）」及び「（株）MON 長岡 均 殿（丙）」が記載されているが、甲は、昨年（2000年）の11月末を以って、乙と丙の両者に対し、「一切の関係を終了させ、以後は断交する旨」を書面で通知して宣明している。
  - ・従って、甲は、本件に同意して、乙と丙が知的所有権を出願・設定するのを許諾しなければならない義務はない。
  - ・甲は、貴殿に対して、「本件」に同意しない旨をここに宣明する。
- ③ また、貴殿は、甲が、乙と丙に対して権利譲渡するようにも求めているが、これにも応ずるつもりはない。
- ④ 「本件」書類は、将来の書証とするべく手元に保管してあるが、希望があれば（元本の一切を）返納する。
- ⑤ 本通知は、丙と乙に開示して差し支えない。

以上、書面によって、通知した。

平成13年6月4日

権利者

田島 裕

田島 裕

自宅住所

〒849-0935

佐賀市八戸溝3-10-511

Tel. 0952-31-1428

Fax. 0952-31-1428

勤務先住所

〒849-8501

佐賀市鍋島5-1-1 佐賀医科大学附属病院 検査部

Tel. 0952-31-6511 （内線3240, 3244）

Fax. 0952-34-2028

E-mail. tajima@post.saga-med.ac.jp



English translation of Exhibit No. 4

Exhibit No. 4

June 8, 2001

To: Mr. Yutaka TAJIMA

From: Yuasa and Hara

ZIP Code: 100-0004

Section 206, New Ohtemachi Bldg.

2-1, Ohtemachi 2-Chome Chiyoda-Ku, Tokyo

Re: National Phase Entry of International Patent Applications

No. PCT/JP99/06615

No. PCT/JP99/06617

No. PCT/JP99/06616

Applicants: KOBAYASHI PHARMACEUTICAL CO., LTD,  
Hitoshi NAGAOKA

Designated Countries: United States, Great Britain, Canada,  
China, Korea, and Singapore

Deadline For Entry: May 27, 2001

Our Ref.: PC/K(X)-17-20, 21, 22US, GB, CA, CN, KR, SG

Dear Sir. We are glad to hear that things are going well for you.

We received your mail dated June 4, 2001.

Please return the forms of the Oath and Assignment which are necessary for the procedure of national phase entry in the United States and Canada which we sent to you on June 1, 2001. When you return the forms, please use the enclosed envelop for sending them.

Sincerely yours

平成13(2001)年6月8日

田島 裕 様

ユアサハラ法律特許事務所  
〒100-0004  
東京都千代田区大手町 2-2-1  
新大手町ビル 206 区  
Tel: 03-3270-6641 (大代表)  
Fax: 03-3246-0233  
弁理士 江尻 ひろ子  
(担当: 弁理士 深澤 憲広)

国際特許出願国内段階移行の件

No.PCT/JP99/06615

No.PCT/JP99/06617

No.PCT/JP99/06616

出 願 人: 小林製薬株式会社・長岡 均

指 定 国: アメリカ・イギリス・カナダ  
中国・韓国・シンガポール

移 行 期 限: 2001年5月27日

当所ファイル: PC/K(X)-17-20,21,22US,GB,CA,CN,KR,SG

拝啓 貴殿益々ご清栄のこととお慶び申し上げます。

平成13年6月4日付貴信を拝受致しました。

本年6月1日付にて当所よりお送りした上記アメリカ・カナダ移行手続に必要な宣誓書及び譲渡証につきましては、ご返送くださいますようお願い申し上げます。なお、ご返送いただく際は、同封の封筒を用いて書留にてお送りください。

敬具

English translation of Exhibit No. 5

Exhibit No. 5

To: Yuasa and Hara  
Patent attorney, Ms. Hiroko EJIRI  
Ditto, Mr. Norihiro FUKAZAWA

I received your letter dated June 8 on June 11.  
In response to your request, I return the whole set of  
documents in these applications.

There is no more to say than the above.

June 12, 2001

Rights Holder: Yutaka TAJIMA  
Sign (seal)

Home Address:  
Zip Code 849-0935  
10-511, Yaemizo 3-Chome, Saga-shi, Saga, Japan  
Tel. 0952-31-1428  
Fax. 0952-31-1428

Office Address:  
Zip Code 849-8501  
1-1, Nabeshima 5-Chome, Saga-shi, Saga, Japan  
Department of Clinical Laboratory  
Saga Medical School Hospital  
Tel. 0952-31-6511 (Ext. 3240, 3244)  
Fax. 0952-34-2028  
E-mail. tajima@post.saga-med.ac.jp

ユアサハラ 法律特許事務所  
弁理士 江尻 ひろ子 殿  
同 深沢 憲広 殿

冠省

貴殿からの6月8日付けの通知を、6月11日に受領した。  
求めに応じて、出願書類の一式を返納する。

2001.6.11  
DPL

以上。

平成13年6月12日

権利者

田島 裕

田島 裕

自宅住所

〒849-0935

佐賀市八戸溝3-10-511  
Tel. 0952-31-1428  
Fax. 0952-31-1428

勤務先住所

〒849-8501

佐賀市鍋島5-1-1 佐賀医科大学附属病院 検査部  
Tel. 0952-31-6511 (内線3240, 3244)  
Fax. 0952-34-2028  
E-mail. tajima@post.saga-med.ac.jp



English translation of Attachment 1

Attachment 1

November 27, 1998

Deed of Assignment

(Assignee 1)

Address: 3-6, 4-Chome, Dosho-machi, Chuo-ku, Osaka-shi,  
Osaka

Name: KOBAYASHI PHARMACEUTICAL CO., LTD

Representative: Kazumasa KOBAYASHI

(Assignee 2)

Address: 22-13, 2-Chome, Kotobuki, Abiko-shi, Chiba

Name: Hitoshi NAGAOKA

I, one of the inventors, do hereby declare that I assigned my entire rights to obtain Patents with respect to one or more Inventions, my entire rights to obtain Utility Model Registrations with respect to one or more Devices, and my entire rights to obtain Design Registrations with respect to one or more Designs, which are related to the inventions hereinafter described, to Assignees 1 and 2 without charge.

TITLES OF THE INVENTIONS:

"LAK ACTIVITY ENHANCERS DERIVED FROM EXTRACT OF LENTINUS  
EDODES MYCELIUM" (Patent Application No. JP10- )

"LAK ACTIVITY-ENHANCING FORMULATIONS CONTAINING EXTRACT OF  
LENTINUS EDODES MYCELIUM" (Patent Application No. JP10- )

"LAK ACTIVITY-SCREENING MATERIALS CONTAINING LENTINUS EXTRACT  
OF EDODES MYCELIUM AND LAK ACTIVITY-SCREENING METHODS USING  
THE EXTRACT" (Patent Application No. JP10- )

"T CELL IMMUNOACTIVITY ENHANCERS CONTAINING EXTRACT OF  
LENTINUS EDODES MYCELIUM" (Patent Application No. JP10- )

Inventor:

Assignor Address: 10-511, Yaemizo 3-Chome, Saga-shi,  
Saga

Name: Yutaka TAJIMA (seal)

添付1

平成10年11月27日

## 譲渡証書

### (譲受人1)

住 所 大阪府大阪市中央区道修町4丁目3番6号

名 称 小林製薬株式会社  
代 表 者 小林 一 雅

### (譲受人2)

住 所 千葉県我孫子市寿2-22-13

名 称 長岡 均

下記の発明について一発明として及び二以上の発明として特許を受ける権利の全部並びに一考案として及び二以上の考案として実用新案の登録を受ける権利の全部並びに一創作として及び二以上の創作として意匠の登録を受ける権利の全部を上記譲受人1および2に無償譲渡いたしましたことに相違ありません。

発明の名称 「シイタケ菌系体抽出物由来のLAK活性増強物質」  
(出願番号 特願平10- )  
「シイタケ菌系体抽出物由来のLAK活性増強用製剤」  
(出願番号 特願平10- )  
「シイタケ菌系体抽出物を含有するスクリーニング物質およびそれを用いたスクリーニング法」  
(出願番号 特願平10- )  
「シイタケ菌系体抽出物を含む $\gamma\delta$ T細胞免疫活性増強剤」  
(出願番号 特願平10- )

発明者

譲 渡 人 住 所 佐賀市八戸溝3丁目10番511号

氏 名 田 島 裕



- 2 -

English translation of Attachment 2

Attachment 2

PCT/JP99/06615

Power of Attorney

January 5, 2000

I, the undersigned, hereby appoint, Ichio SHAMOTO, Shosuke IMAI, Chuji MASUI, Tadahiko KURITA, Yasushi KOBAYASHI, and Hiroko EJIRI, registered Patent attorneys, as my attorneys and hereby grant the above named attorneys the power;

1. to act for me in all matters relating to an international application under the Patent Cooperation Treaty entitled

LAK ACTIVITY-SCREENING MATERIALS CONTAINING LENTINUS  
EXTRACT OF EDODES MYCELIUM AND LAK ACTIVITY-SCREENING  
METHODS USING THE EXTRACT;

2. to withdraw the above identified international application or the designated State; and

3. to act in all matters relating to a demand for the International Preliminary Examination with respect to the above identified international application and to withdraw the demand or the election of any elected State.

Address: 10-511, Yaemizo 3-Chome, Saga-shi, Saga, Japan  
Name: Yutaka TAJIMA (seal)

PCT/JP99/06616

## Power of Attorney

January 5, 2000

I, the undersigned, hereby appoint, Ichio SHAMOTO, Shosuke IMAI, Chuji MASUI, Tadahiko KURITA, Yasushi KOBAYASHI, and Hiroyuki TOMITA, registered Patent attorneys, as my attorneys and hereby grant the above named attorneys the power;

1. to act for me in all matters relating to an international application under the Patent Cooperation Treaty entitled

LAK ACTIVITY ENHANCERS DERIVED FROM EXTRACT OF LENTINUS  
EDODES MYCELIUM AND LAK ACTIVITY-ENHANCING FORMULATIONS  
CONTAINING THE EXTRACT;

2. to withdraw the above identified international application or the designated State; and

3. to act in all matters relating to a demand for the International Preliminary Examination with respect to the above identified international application and to withdraw the demand or the election of any elected State.

Address: 10-511, Yaemizo 3-Chome, Saga-shi, Saga, Japan  
Name: Yutaka TAJIMA (seal)



PCT/JP99/06617

## Power of Attorney

January 5, 2000

I, the undersigned, hereby appoint, Ichio SHAMOTO, Shosuke IMAI, Chuji MASUI, Tadahiko KURITA, Yasushi KOBAYASHI, and Hiroko EJIRI, registered Patent attorneys, as my attorneys and hereby grant the above named attorneys the power;

1. to act for me in all matters relating to an international application under the Patent Cooperation Treaty entitled

..T CELL MMUNOACTIVITY ENHANCERS CONTAINING EXTRACT OF LENTINUS EDODES MYCELIUM;

2. to withdraw the above identified international application or the designated State; and

3. to act in all matters relating to a demand for the International Preliminary Examination with respect to the above identified international application and to withdraw the demand or the election of any elected State.

Address: 10-511, Yaemizo 3-Chome, Saga-shi, Saga, Japan  
Name: Yutaka TAJIMA (seal)

添付 2

PCT/JP99/06615

## 委 任 状

平成 17 年 / 月 5 日

私儀 弁理士 社本 一夫、同今井 庄亮、同増井 忠武、同栗田 忠彦、  
同小林 泰及び同江尻 ひろ子を代理人と定めて下記の権限を委任します。

1. 特許協力条約に基づく国際出願


シイタケ菌糸体抽出物を含有する L A K 活性スクリーニング物質および  
それを用いた L A K 活性スクリーニング法

に関する一切の件

2. 上記出願及び指定国の指定を取下げる件

3. 上記出願についての国際予備審査の請求に関する一切の件並びに  
請求及び選択国の選択を取下げる件

あて名 佐賀県佐賀市八戸溝 3 丁目 1 0 番 5 1 1 号

氏 名 田 島 裕 

# 委任状

平成 17 年 / 月 5 日

私儀 弁理士 社本 一夫、同今井 庄亮、同増井 忠武、同栗田 忠彦、  
同小林 泰及び同富田 博行を代理人と定めて下記の権限を委任します。

1. 特許協力条約に基づく国際出願

シイタケ菌糸体抽出物由来の L A K 活性増強物質  
およびこれを含む L A K 活性増強用製剤

に関する一切の件

2. 上記出願及び指定国の指定を取下げる件

3. 上記出願についての国際予備審査の請求に関する一切の件並びに  
請求及び選択国の選択を取下げる件

あて名 佐賀県佐賀市八戸溝 3 丁目 10 番 511 号

氏 名

田 島

裕



PCT/JP99/06615

# 委任状

平成 10 年 1 月 5 日

私儀 弁理士 社本 一夫、同今井 庄亮、同増井 忠式、同栗田 忠彦、  
同小林 泰及び同江尻 ひろ子を代理人と定めて下記の権限を委任します。

1. 特許協力条約に基づく国際出願

シイタケ菌糸体抽出物を含む  $\gamma$   $\delta$  T細胞免疫活性増強剤

に関する一切の件

2. 上記出願及び指定国の指定を取下げの件

3. 上記出願についての国際予備審査の請求に関する一切の件並びに  
請求及び選択国の選択を取下げの件

あて名 佐賀県佐賀市八戸溝3丁目10番511号

氏 名

田 島

裕





English translation of Attachment 3

Attachment 3

Notification of Rupture

To: Mr. Takashi TSUJINO of KOBAYASHI PHAMACEUTICAL Co.,Ltd.  
Central Research Institute; and  
Mr. Kenji ASANO of KOBAYASHI PHAMACEUTICAL Co.,Ltd.  
Central Research Institute

This is to inform you the following:

(1) I am going to terminate all the relations with KOBAYASHI PHAMACEUTICAL Co., Ltd. as of today and I will afterward sever the relations with KOBAYASHI PHAMACEUTICAL Co., Ltd..

(2) KOBAYASHI PHAMACEUTICAL Co., Ltd. should not, either for themselves or let a third party, establish any rights using the Intellectual Property according to my efforts nor should they obtain any concessions or conveniences. KOBAYASHI PHAMACEUTICAL Co.,Ltd. should not let a third party establish any rights nor obtain any interests and conveniences.

(3) I will return the documents which I have been keeping for KOBAYASHI PHAMACEUTICAL Co., Ltd. and which are believed to be a highly confidential. I already disposed of simple copies of documents.

(4) As of the same date, I submitted a notice of my withdrawal from the "Workshop for Countermeasures to Lifestyle-Related Diseases" which KOBAYASHI PHAMACEUTICAL Co., Ltd. hosts. I have no intention to participate in the Workshop.

There is no more to inform than the above.

Yutaka TAJIMA  
Sign (seal)

Address:

Zip Code 849-8501  
1-1, Nabeshima 5-Chome, Saga-shi, Saga  
Department of Clinical Laboratory  
Saga Medical School Hospital  
Tel. 0952-31-6511 (Ext. 3240, 3244)  
Fax. 0952-34-2028

断交通知

株式会社 小林製薬 中央研究所 辻野 隆志 殿  
同 浅野 健治 殿

冠省

- ①本日をもって、貴社との一切の関係を全て終了させ、以後、断交絶縁する。
- ②当方の手による知的財産を用いて、諸権利を設定してはならない。また、利権・便宜を得てはならない。第3者にそうさせてもならない。
- ③貴社より預かっていた資料の内、機密性が高いと思われるものについては、返納する。単なる複製物については、処分した。
- ④尚、貴社が主宰する「生活習慣病対策研究会」については、同日、退会の手続きを行った。今後、参画する意志はない。

以上、通知した。

平成12年11月25日

田島 裕

田島 裕 (印)

〒849-8501

佐賀市鍋島5-1-1 佐賀医科大学附属病院 検査部

Tel. 0952-31-6511 (内線3240, 3244)

Fax. 0952-34-2028



- 6 -

English translation of Attachment 4

Attachment 4

December 11, 2001

To: Mr. Yutaka TAJIMA  
Department of Clinical Laboratory  
Saga Medical School Hospital

From: KOBAYASHI PHARMACEUTICAL CO., LTD  
Research and Development Company  
Division of Research and Planning  
Director Naonori MURAKAMI (Seal)  
30-3, 1-Chome, Toyokawa  
Ibaraki-shi, Osaka, Japan  
TEL: 0726-40-0121  
FAX: 0726-41-5951

Re: Oaths relating to the US patent applications and Canadian patent applications.

Dear Sir. I'm glad to hear that things are going well for you.

In connection with the above-identified cases, we would like to inform you of the following.

The due dates for the submission of an Oath in the U.S. and Canadian patent applications that claim priority from the four Japanese applications listed below in which we had the right to obtain patent assigned from you on November 27, 1998 are approaching.

Since we need your signature to validate the Oath, we would like an opportunity to meet you.

Would you please let us know the date which is convenient to you.

We would appreciate your kind cooperation in this matter.

Very truly yours,

Note:

JP Appln. No.	Title of the invention
JP No. 353926/98	LAK ACTIVITY-SCREENING MATERIALS CONTAINING LENTINUS EXTRACT OF EDODES MYCELIUM AND LAK ACTIVITY-SCREENING METHODS USING THE EXTRACT
JP No. 353927/98	LAK ACTIVITY ENHANCERS DERIVED FROM EXTRACT OF LENTINUS EDODES MYCELIUM
JP No. 353928/98	LAK ACTIVITY-ENHANCING FORMULATIONS DERIVED FROM EXTRACT OF LENTINUS EDODES MYCELIUM
JP No. 337822/98	..T CELL IMMUNOACTIVITY ENHANCERS CONTAINING EXTRACT OF LENTINUS EDODES MYCELIUM



**<Superscription On The Envelop>**

To: ZIP Code: 849-0935  
Address: 10-511, Yaemizo 3-Chome, Saga-shi  
Name: Mr. Yutaka TAJIMA

From: Division of Research and Planning, Naoki MURAKAMI  
Dated: December 11, 2001

**<Certified Receipt Of The Delivery-Certified Mail>**

Receipt of registered mail and certified mail (duplicate for a customer)

(Sender's address and name)  
30-3, Toyokawa 1-Chome  
KOBAYASHI PHAMACEUTICAL Co.,Ltd. Central Research Institute

Name of addressee: Yutaka TAJIMA  
Acceptance No.: 165-21 48435-0  
Postage cost: 1070 yen

Express mail (stamp)  
Proof of delivery (stamp)  
Ibaraki Shimizu December 11, 2001 12-18 (stamp)

<Post Card For The Proof Of Delivery>

Front Face

ZIP Code: 567-0057

Address: 30-3, Toyokawa 1-Chome, Ibaraki-shi, Osaka  
KOBAYASHI PHAMACEUTICAL Co.,Ltd. Central Research Institute  
Division of Research and Planning  
To: Mr. Naoki MURAKAMI

From: Saga North Post Office

Rear Face

Postal Delivery Certificate

Name of addressee: Mr. Yutaka TAJIMA

Acceptance No.: 165-21-48435-0

We certify that the above postal matter was delivered to  
the addressee on December 17, 2001.


Saga Prefecture

Saga North Postal Office

Saga North December 17, 2001 18-24 (stamp)

平成 13 年 12 月 11 日

佐賀医科大学付属病院  
検査部 田島 裕 先生

小林製薬株式会社  
研究開発カンパニー  
研究企画部  
部長 村上 直紀   
大阪府茨木市豊川 1-30-3  
TEL : 0726-40-0121  
FAX : 0726-41-5951

米国・カナダ特許出願に係わる宣誓書について

拝啓 時下益々ご清栄の段大慶に存じます。

さて、早速ですが表記の件につきご連絡申し上げます。

平成 10 年 11 月 27 日に特許を受ける権利を譲渡していただいております下記 4 件の出願につきまして、現在米国及びカナダの特許出願に関して、宣誓書を提出する期日が近づいています。

つきましては、宣誓書にサインを記入していただきたく、ご面談の機会を頂戴したく存じます。

ご都合の良い日を、ご連絡の程お願いいたします。

以上、よろしくお願いいたします。

敬 具

記

出願番号 : 発明の名称  
特願平 10-353926 号 : 「シイタケ菌系体抽出物を含有する LAK 活性スクリーニング物質およびそれを用いた LAK 活性スクリーニング法」  
特願平 10-353927 号 : 「シイタケ菌系体抽出物由来の LAK 活性増強物質」  
特願平 10-353928 号 : 「シイタケ菌系体抽出物由来の LAK 活性増強用製剤」  
特願平 10-337822 号 : 「シイタケ菌系体抽出物を含む  $\gamma\delta$  T 細胞免疫活性増強剤」

以 上

郵便物のあて名にはぜひ部課名まで記入願います。

8490935

田島裕様

佐賀市戸溝3  
10  
511

入れ歯  
洗浄剤

タフデント



小林製薬株式会社  
中央研究所

〒567-0057 大阪府大阪市豊川1丁目30番3号 ☎0726-40-0121 研究開発カンパニー

部署 研究企画部 村上直紀

平成13年12月11日

書留・配達記録郵便物受領証(お客様控)

(差出人の住所氏名) 豊川 1-30-3 小林製薬(株) 中央研究所 様				
受取人の氏名	引受番号	郵便料	申出損害要償額	摘要
田島 裕	165-21 48435-0	1070		
		速達		
<p> <small>           ご注意 この受領証は、損害賠償の請求をするとき、他の場合に必要ですから大切に保存してください。            簡易書留の損害賠償額は、8千円を限度とする実損額です。            摘要欄：カン(簡易)、クロ(配達記録)、ソク(速達)、ハイ(配達証明)            の記号 ナイ(内容証明)、トク(特別送達)、ダイ(代金引換)            ジ(引受時刻証明)、シテ(配達日指定)            配達状況がわかります。フリーダイヤル 0120-232886            インターネット <a href="http://www.postal.mpt.go.jp/">http://www.postal.mpt.go.jp/</a> </small> </p>				

本清算  
 13.12.11  
 12-18 郵便局

BEST AVAILABLE COPY

郵便はがき

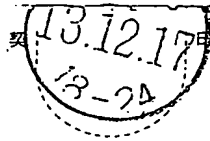
5670057

通信事務

佐賀県郵便局

□□□□□□

大良府茨木市曲町  
1丁目3  
小林製衣業(株) 中央研究所  
研究企画部  
村上直紀 様



郵便物配達証明書 / 9770

受取人の 氏 名	田 島 裕 様
引受番号	165-21-48425-0
<p>上記の郵便物は、13年12月17日配達したのでこれを証明します。</p> <p>佐 賀 県 佐賀北 郵便局</p> <p>付 佐賀北 13.12.17 13-74</p>	

ユ 07370 (12.1・IDP・11)





- 10 -

English translation of Attachment 5

Attachment 5

December 27, 2001

To: Mr. Yutaka TAJIMA  
Department of Clinical Laboratory  
Saga Medical School Hospital

From: KOBAYASHI PHARMACEUTICAL CO., LTD  
Research and Development Company  
Division of Research and Planning  
Director Naonori MURAKAMI (Seal)  
30-3, Toyokawa 1-Chome, Ibaraki-shi, Osaka  
TEL: 0726-40-0121  
FAX: 0726-41-5951

Re: Oaths relating to the US patent applications and Canadian patent applications.

Dear Sir. I'm glad to hear that things are going well for you.

Thank you very much for your taking time to give us a call on December 18, 2001.

It was very unfortunate to us that we were not given a chance to meet you but at any rate we appreciate your kindness in calling us.

You said on the phone that you did not want to sign the Oath but would just leave the cases as they are.

In case some misunderstanding should cause you inconveniences, we would like to take this opportunity to remind you of the following two points.

First, the purpose of the Oath is to establish that you are one of the true inventors of the inventions under application. May we understand that you just have no intention to declare under Oath that you are an inventor?

Second, Mr. Nagaoka and our company are not the sole applicants of the U.S. and Canadian patent applications at issue and you are also entitled as a co-applicant. In other words, once those applications mature to patent, you will be one of the joint patentees.



We take the liberty of mentioning these points here since we are very much worried about the possibility of your misunderstanding the circumstances of the patent applications.

We would be grateful if you fully understood the situation and gave us your consent to sign the Oath.

Enclosed are the unexecuted Oath declaring that you are one of the true inventors of the inventions under the U.S. and Canadian patent applications at issue, as well as a self-addressed envelope. We would be very happy if you signed the Oath and had it sent back to us at your earliest convenience.

We would appreciate your kind cooperation in this matter.

Very truly yours,

<a self-addressed envelope>

To: ZIP Code: 567-0057  
Address: 30-3, Toyokawa 1-Chome, Ibaraki-shi, Osaka  
Name: KOBAYASHI PHARMACEUTICAL CO., LTD  
Research and Development Company  
Naonori MURAKAMI

<Post card for the proof of delivery>

Front face

To: ZIP Code: 567-0057  
Address: 30-3, Toyokawa 1-Chome, Ibaraki-shi, Osaka  
KOBAYASHI PHAMACEUTICAL Co.,Ltd. Central Research  
Institute  
Division of Research and Planning  
Name: Mr. Naoki MURAKAMI

From: Post Office

Rear face


Postal Delivery Certificate  
Name of addressee: Mr. Yutaka TAJIMA  
Acceptance No.: 169-20-71589-5

We certify that the above postal matter was delivered to  
the addressee on December 29, 2001.

Prefecture  
Postal Office  
Saga North December 29, 2001 18-24 (stamp)

平成13年12月27日

佐賀医科大学付属病院  
検査部 田島 裕 先生

小林製薬株式会社  
研究開発カンパニー  
研究企画部  
部長 村上 直紀   
大阪府茨木市豊川1-30-3  
TEL : 0726-40-0121  
FAX : 0726-41-5951

米国・カナダ特許出願に係わる宣誓書について

前略 時下益々ご清栄の段大慶に存じます。

先般18日、ご多忙の中、お電話を頂戴しましたこと、大変感謝しております。

ご面談の機会が頂戴出来ませんでした事は大変残念でしたが、お電話有り難く存じ上げます。

ところで、お電話の内容によりますと、宣誓書にはサインをせず、放置したいとのことであります。

そこで、誤解等がありましたら先生に不都合があらうかと思いますので、もう一度ご確認のために以下の通りご連絡申し上げます。

一つ目の確認ですが、宣誓書は、田島先生が発明者としての真の発明者であることの宣誓書であります。

発明者として、宣誓はなさらないということによろしいのでしょうか。

二つ目の確認と致しまして、この度の米国、カナダへの特許出願に関しましては、長岡様と弊社のみの出願人としての手続きではなく、田島先生も共同出願人の立場となる手続きに他なりません。これは、権利化されましたら、田島先生も共同権利者の一人となるということでございます。

この辺り、誤解が生じていないかと大変気になりましたので、再度ご確認させていただきます。

上記主旨ご確認の上、宣誓書へのサインをいただけますなら、何卒サインをお願いしたいと存じ上げます。

同封書類等と致しまして、発明者としての宣誓書、返信用封筒をご用意しておりますので、早急にご返信いただけましたら幸いと存じます。

以上、よろしくお願いいたします。

敬 具

70057

大阪府 茨木市 曲笠川二丁目 30  
3

小林製薬株式会社

中央研究所

村上直紀行

郵便はがき

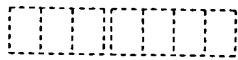


5670057

通信事務

大阪府茨木市曲井  
1丁目30-1-3  
小林製菓(株) 中央研究所  
研究企画部  
村上直紀 様

郵便局



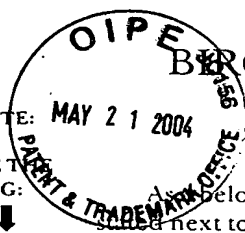
契印

郵便物配達証明書 4-1054

受取人の 氏 名	田 島 裕 様
引受番号	169-20-71589-5
上記の郵便物は、13年12月29日配達 したのでこれを証明します。	
県	佐賀県
郵便局	31220 12-24

ユ 07370 (12.1・1DP・11)





BERCH, TEWART, KOLASCH & BERCH, LLP

PLEASE NOTE:  
YOU MUST  
COMPLETE THE  
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JOINT DECLARATION AND POWER OF ATTORNEY  
FOR PATENT AND DESIGN APPLICATIONS

ATTORNEY DOCKET NO.  
0230-0162P

I, the below named inventor, I hereby declare that: my residence, post office address and citizenship are as stated next to my name; that I verily believe that I am the original, first and sole inventor (if only one inventor is named below) or an original, first and joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Insert Title:

γδ T CELL IMMUNOACTIVITY ENHANCERS CONTAINING EXTRACT OF  
LENTINUS EDODES MYCELIUM

Fill in Appropriate  
Information -  
For Use Without  
Specification  
Attached:

the specification of which is attached hereto. If not attached hereto,

the specification was filed on \_\_\_\_\_ as  
United States Application Number \_\_\_\_\_; and /or

the specification was filed on November 26, 1999 as PCT  
International Application Number PCT/JP99/06617; and was  
amended under PCT Article 19 on \_\_\_\_\_ (if applicable)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (six months for designs) prior to this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows.

I hereby claim foreign priority benefits under Title 35, United States Code, §119 (a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Insert Priority  
Information:  
(if appropriate)

➔ Prior Foreign Application(s)  
337822/1998

(Number)

Japan

(Country)

11/27/98

(Month/Day/Year Filed)

Priority Claimed

☒ Yes ☐ No

(Number)

(Country)

(Month/Day/Year Filed)

☐ Yes ☐ No

(Number)

(Country)

(Month/Day/Year Filed)

☐ Yes ☐ No

(Number)

(Country)

(Month/Day/Year Filed)

☐ Yes ☐ No

(Number)

(Country)

(Month/Day/Year Filed)

☐ Yes ☐ No

I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional application(s) listed below.

Insert Provisional  
Application(s):  
(if any)

(Application Number)

(Filing Date)

(Application Number)

(Filing Date)

All Foreign Applications, if any, for any Patent or Inventor's Certificate Filed More Than 12 Months (6 Months for Designs) Prior To The Filing Date of This Application:

Insert Requested  
Information:  
(if appropriate)

Country

Application No.

Date of Filing (Month/Day/Year)

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

Insert Prior U.S.  
Application(s):  
(if any)

(Application Number)

(Filing Date)

(Status - patented, pending, abandoned)

(Application Number)

(Filing Date)

(Status - patented, pending, abandoned)



I hereby appoint the following attorneys to prosecute this application and/or an international application based on this application and to transact all business in the Patent and Trademark Office connected therewith and in connection with the resulting patent based on instructions received from the entity who first sent the application papers to the attorneys identified below, unless the inventor(s) or assignee provides said attorneys with a written notice to the contrary:

Terrell C. Birch	(Reg. No. 19,382)	Raymond C. Stewart	(Reg. No. 21,066)
Joseph A. Kolasch	(Reg. No. 22,463)	James M. Slattery	(Reg. No. 28,380)
Bernard L. Sweeney	(Reg. No. 24,448)	Michael K. Mutter	(Reg. No. 29,680)
Charles Gorenstein	(Reg. No. 29,271)	Gerald M. Murphy, Jr.	(Reg. No. 28,977)
Leonard R. Svensson	(Reg. No. 30,330)	Terry L. Clark	(Reg. No. 32,644)
Andrew D. Meikle	(Reg. No. 32,868)	Marc S. Weiner	(Reg. No. 32,181)
Joe McKinney Muncy	(Reg. No. 32,334)	Andrew F. Reish	(Reg. No. 33,443)
C. Joseph Faraci	(Reg. No. 32,350)	Donald J. Daley	(Reg. No. 34,313)

Send Correspondence to:

**BIRCH, STEWART, KOLASCH & BIRCH, LLP**

P.O. Box 747 • Falls Church, Virginia 22040-0747

Telephone: (703) 205-8000 • Facsimile: (703) 205-8050

PLEASE NOTE:  
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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of First or Sole  
Inventor:  
Insert Name of Inventor  
Insert Date This  
Document is Signed

Insert Residence  
Insert Citizenship

Insert Post Office  
Address

Full Name of Second  
Inventor, if any:  
see above

Full Name of Third  
Inventor, if any:  
see above

Full Name of Fourth  
Inventor, if any:  
see above

Full Name of Fifth  
Inventor, if any:  
see above

GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE *
Kenji	ASANO	<i>Kenji Asano</i>	May 30, 2001
Residence (City, State & Country)		CITIZENSHIP	
Osaka, Japan		Japanese	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			
c/o Kobayashi Pharmaceutical Co., Ltd. of 3-13-35, Mitsuya Minami, Yodogawa-ku, Osaka-shi, Osaka 532-0035 Japan			
GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE *
Yukiko	MATSUDA	<i>Yukiko Matsuda</i>	May 30, 2001
Residence (City, State & Country)		CITIZENSHIP	
Osaka, Japan		Japanese	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			
c/o Kobayashi Pharmaceutical Co., Ltd. of 3-13-35, Mitsuya Minami, Yodogawa-ku, Osaka-shi, Osaka 532-0035 Japan			
GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE *
Yutaka	TAJIMA		
Residence (City, State & Country)		CITIZENSHIP	
Saga, Japan		Japanese	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			
10-511, Yaemizo 3-chome, Saga-shi, Saga 849-0935 Japan			
GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE *
Residence (City, State & Country)		CITIZENSHIP	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			
GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE *
Residence (City, State & Country)		CITIZENSHIP	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			

\* DATE OF SIGNATURE